

# **Disciplinary Removals In Special Education**

## **A Guide for Parents and School District Personnel**



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Technical Assistance guides are developed by the Division of Special Education to provide guidance to schools, parents and advocates regarding eligibility for and the implementation of services to students with disabilities under the Individuals with Disabilities Education Act, the Administrative Rules of Montana, and Montana statutes.

This document contains recommended practices and procedures for disciplinary removal of children and youth with disabilities. All statements regarding disciplinary removals are contained in the current *Montana State Plan Under the Individuals with Disabilities Education Act*.

This guide is presented to assist school districts and parents in understanding the Individuals with Disabilities Education Act (IDEA) federal regulations covering disciplinary procedures (34 Code of Federal Regulations, Sections 300.519 through 300.529).

The guide is not intended to answer every possible question regarding suspension or expulsion of students with disabilities, but to provide answers and examples for general questions.

If you have questions regarding the suspension or expulsion of a student with disabilities after reviewing this guide, please contact the Division of Special Education at 444-5664.

Comments, additional questions or suggestions regarding this guide may be sent to:

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## **CHANGE OF CURRENT IEP PLACEMENT FOR DISCIPLINARY PURPOSES**

### **1. What is meant by a "change of current placement" in reference to disciplinary removals?**

A change of current IEP placement occurs if –

- (a) The removal is for more than 10 consecutive school days; or
- (b) The child is subject to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the child is removed and the proximity of the removals to one another.

34 CFR 300.519

### **2. May authorized school district personnel suspend a student with an IDEA protected disability?**

Yes. To the extent removal would be applied to students without disabilities, a student with a disability may be removed from his/her current IEP placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement – see question and answer No. 1).

34 CFR 300.520(a)

### **3. Does IDEA require that a school district always provide educational services to a student with an IDEA-protected disability who has been removed for disciplinary reasons?**

No. A student with an IDEA-protected disability may be removed from his/her current IEP placement for 10 school days or less in a school year without the provision of educational services. However, beginning on the 11<sup>th</sup> day of removal, the school must provide the necessary services determined by school personnel in consultation with the student's special education teacher.

34 CFR 300.520(a)

### **4. Does in-school suspension count as one of the 10 school days in a school year that a student can be removed from his/her current IEP placement without providing educational services?**

Likely not. The IDEA regulations do not address in-school suspension. However, a discussion of in-school suspension is included in "Attachment I – Analysis of Comments and Changes" published with the final regulations. In-school suspension will not be counted as one of the 10 days in a school year that a student can be removed if "the child is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the services

specified on his/her IEP and continue to participate with nondisabled children to the extent they would have in their current IEP placement."

Federal Register, Vol. 64, No. 48, 3/12/99, Attachment 1—Analysis of Comments and Changes, p. 12619

**5. If a student is suspended from riding a bus to school and does not attend school during the suspension, do the school days missed count toward the 10-day limit per school year that a student may be suspended without the provision of FAPE?**

Yes, the bus suspension would count as a day of suspension if bus transportation is a part of the student's IEP and the school fails to provide alternative transportation. If bus transportation is not part of the student's IEP, the student and his/her parents would have the same obligations to get to and from school as a nondisabled student who is suspended from the bus. However, the school should determine whether the behavior that resulted in the bus suspension is similar to the behavior in a classroom that is addressed in an IEP and whether bus behavior should be addressed in the IEP or the student's behavior intervention plan.

Federal Register, Vol. 64, No. 48, 3/12/99, Attachment 1—Analysis of Comments and Changes, p. 12619

**6. When does the student's IEP team need to meet to develop and implement a behavioral assessment plan for a student with an IDEA-protected disability who has been removed from school?**

If the student did not have a behavioral intervention plan before committing the offense, the school district must convene an IEP meeting within 10 business days of the offense that resulted in the student being removed for more than 10 school days in a school year or that constitutes a change of placement to develop an assessment plan and, as soon as practicable, complete the assessments and develop an appropriate behavioral intervention plan to address the behavior.

34 CFR 300.520(b)(1)

If the student had a behavioral intervention plan before the offense occurred, the IEP team must meet to review the behavioral intervention plan and its implementation to determine if modifications are necessary.

34 CFR 300.520(b)(ii)

## **MANIFESTATION DETERMINATION**

**7. What is an IDEA manifestation determination and when is one required?**

A manifestation determination is a review of the relationship between the student's IDEA protected disability and the behavior subject to the disciplinary action.

A manifestation determination review must be conducted no later than 10 school days after the date on which the decision to unilaterally change the student's IEP placement is made.

34 CFR 300.523(a)

**8. Who conducts the manifestation determination and what are the requirements of a manifestation determination?**

The student's IEP team and other qualified personnel conduct the manifestation determination review. The following chart summarizes the considerations and criteria for making a manifestation determination.

34 CFR 300.523(b) & (c)

MANIFESTATION CONSIDERATIONS AND DETERMINATION CRITERIA		
What	Who	When
<ol style="list-style-type: none"><li>1. Consider all <b>relevant</b> information pertaining to the behavior including:<ul style="list-style-type: none"><li>• Evaluation and diagnostic results and information supplied by the parents of the student;</li><li>• Observations of the student; and</li><li>• The student's IEP and placement.</li></ul></li><li>2. Then determine that, in relation to the behavior subject to disciplinary action:<ul style="list-style-type: none"><li>• The student's IEP and placement were appropriate and the special education services, supplementary aids and services and behavioral intervention strategies were provided consistent with the student's IEP and placement;</li><li>• The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and</li><li>• The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.</li></ul></li></ol>	IEP team and other qualified personnel	Immediately, but in no case later than <b>10 school days after the decision is made:</b> <ul style="list-style-type: none"><li>▪ To impose a suspension or removal that constitutes a disciplinary change of placement; or</li><li>▪ To change the placement of a student with a disability to an interim alternative educational setting (IAES) by a superintendent or an impartial hearing officer.</li></ul>
<b>DECISION:</b> If <b>any</b> of the standards in #2 above are not met, the behavior <b>must be considered a manifestation</b> of the student's disability.		



## RESULTING ACTIONS

A student with a disability may not be suspended or removed from his/her current educational placement for violation of school rules following a determination by the IEP team that the behavior is a manifestation of the student's disability, except for:

- instances when the parents or adult student and the school district otherwise agree;
- removal to interim alternative educational setting by authorized school personnel for weapons, illegal drugs or controlled substances offenses; or
- removal by an impartial hearing officer when it is determined that maintaining the student's current placement is substantially likely to result in injury to the student or to others.

If the behavior is determined not to be a manifestation of the student's disability, a disciplinary suspension or removal may be imposed to the same extent as for a student without a disability, except that the school district must provide services necessary for the student to progress in the general curriculum and advance toward achieving the goals set out in the IEP, in another setting.

If the IEP team identifies any deficiencies in the student's IEP, placement or implementation, it must take immediate steps to remedy those deficiencies.

### 9. Who are "other qualified personnel"?

The term "qualified personnel" means personnel who have met state educational agency-approved or state educational agency-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

34 CFR 300.23

In the case of a manifestation determination review, the term may also include individuals who are knowledgeable about how a child's disability can impact on behavior or on understanding the impact and consequences of behavior, and persons knowledgeable about the child and his or her disabilities.

Federal Register, Vol. 64, No. 48, 3/12/99, Attachment 1—Analysis of Comments and Changes, p. 12625

### 10. When may a student with an IDEA-protected disability be removed from his/her current IEP placement for more than 10 consecutive school days in a school year?

A student can be removed for more than 10 consecutive school days when:

- a) the IEP team determines that there is no relationship between the student's behavior and his/her disability;
- b) the IEP team determines that there is a relationship between the student's behavior and his/her disability; however, there are weapons or drugs involved;
- c) an independent hearing officer has ruled that the student is a danger to him/herself or others; or
- d) the parent or adult student has agreed to an alternate placement .

The following chart may be helpful in understanding what is required in different situations.

**CHANGE OF IEP PLACEMENT OF A STUDENT  
WITH AN IDEA-PROTECTED DISABILITY**

<b>Unilateral change of the current IEP placement of a student with an IDEA-protected disability</b>	<b>IEP team decides <u>behavior is</u> a manifestation of student's IDEA-protected disability</b>	<b>Who decides IAES and which educational services are necessary</b>	<b>IEP team decides <u>behavior is not</u> a manifestation of student's IDEA-protected disability</b>	<b>Who decides services to be provided</b>
<b>1.* Injury not likely</b>	District may not unilaterally change student's current IEP placement.		District may remove student for the same length of time as it would remove a student without an IDEA-protected disability.	The student's IEP team will determine which services the district must provide.
<b>2.* Use or possession of weapons/drugs or solicitation of sale of controlled substances</b>	District may unilaterally place the student in IAES for a maximum of 45 calendar days.	The student's IEP team determines the IAES.	(same as above)	(same as above)
<b>3.* Injury to self or others is likely if the student remains in current IEP placement</b>	District may request expedited due process hearing order to place student in IAES for 45 days or less if the parents disagree with the proposed placement.  If injury is still likely after 45 days, district may request an additional hearing.	Authorized school personnel in consultation with student's special education teacher propose an IAES to the Due Process Hearing Officer.	(same as above)	(same as above)
<b>4* Student is not identified as having an IDEA-protected disability</b>	If the district has knowledge that the student may have an IDEA-protected disability, the district shall seek permission to evaluate the student and conduct an expedited evaluation and, if qualified, develop and implement an IEP.			

\*Additional information is found on corresponding charts No. 1 through 4 (following).

## **Suspension Chart 1 – IDEA-Protected Student Injury Not Likely - No Weapons or Drugs**

**A school district may remove an IDEA-protected student for 10 school days or less in a school year in the same manner a student without an IDEA-protected disability is suspended. The IDEA does not require that the student be provided FAPE during the first 10 days of removal.**

IDEA defines a change in placement for disciplinary removals: "For purposes of removals of a child with a disability from the child's current educational placement under Secs. 300.520 - 300.529, a change of placement occurs if- (a) The removal is for more than 10 consecutive school days; or (b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another." (34 CFR 300.519)

### **The district proposes to unilaterally change the student's current IEP placement**

Notice must be sent to the parents, including a copy of the procedural safeguards notice, on the day the decision to change the student's current IEP placement is made.

**A manifestation determination review must be conducted immediately, if possible, but in no case later than 10 school days after the date on which the decision to take action is made [Refer to Manifestation Table].**

(Behavior assessment plan must be developed and behavior intervention plan implemented or, if the student already has a behavior intervention plan, the plan must be reviewed and modified, if necessary, within 10 business days of removal or commencing removal that constitutes a change of placement.)

**Conduct is a manifestation of IDEA-protected disability.**

- The district may not unilaterally change the student's IEP placement.
- The student returns to the last approved IEP placement.

**Conduct is not a manifestation of IDEA-protected disability.**

- The district may unilaterally change the student's IEP placement for the same length of time that it would remove a student without an IDEA-protected disability for the same behavior.
- The district is required to provide services.

(The student's IEP team determines services necessary for the student to progress in the general curriculum and advance toward achieving the goals set out in the IEP in another setting.)

**The parent may request a due process hearing if the parent disagrees with the manifestation determination or the placement – "stay put" is in the last approved IEP placement.**

## **Suspension Chart 2 – IDEA-Protected Student Weapons or Drugs Involved**

**A school district may remove an IDEA-protected student for 10 school days or less in a school year in the same manner a student without an IDEA-protected disability is suspended. The IDEA does not require that the student be provided FAPE during the first 10 days of removal.**

IDEA defines a change in placement for disciplinary removals: “For purposes of removals of a child with a disability from the child’s current educational placement under Secs. 300.520 - 300.529, a change of placement occurs if- (a) The removal is for more than 10 consecutive school days; or (b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.”  
(34 CFR 300.519)

### **The district proposes to unilaterally change the student’s current IEP placement**

Notice must be sent to the parents, including a copy of the procedural safeguards notice, on the day the decision to change the student’s current IEP placement is made.

**A manifestation determination review must be conducted immediately, if possible, but in no case later than 10 school days after the date on which the decision to take action is made [Refer to Manifestation Table].**

(Behavior assessment plan must be developed and behavior intervention plan implemented or, if the student already has a behavior intervention plan, the plan must be reviewed and modified, if necessary, within 10 business days of removal or commencing removal that constitutes a change of placement.)

**Conduct is a manifestation of IDEA-protected disability.**

- The district may unilaterally place student in an IAES for 45 days or less.
- The IAES is determined by the IEP team and selected to enable continued progress in the general curriculum and to receive IEP services, including services to address the behavior involving weapons or drugs.

**Conduct is not a manifestation of IDEA-protected disability.**

- The district may unilaterally change the student’s IEP placement for the same length of time that it would remove a student without an IDEA-protected disability for the same behavior.
- The district is required to provide services.

(The student’s IEP team determines services necessary for the student to progress in the general curriculum and advance toward achieving the goals set out in the IEP in another setting.)

**The parent may request a due process hearing if the parent disagrees with the manifestation determination or the placement – “stay put” is in IAES until a due process order is issued or expiration of the IAES, whichever occurs first.**

## **Suspension Chart 3 – IDEA-Protected Student Injury Likely - No Weapons or Drugs**

**A school district may remove an IDEA-protected student for 10 school days or less in a school year in the same manner a student without an IDEA-protected disability is suspended. The IDEA does not require that the student be provided FAPE during the first 10 days of removal.**

IDEA defines a change in placement for disciplinary removals: "For purposes of removals of a child with a disability from the child's current educational placement under Secs. 300.520 - 300.529, a change of placement occurs if- (a) The removal is for more than 10 consecutive school days; or (b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another."  
(34 CFR 300.519)

### **The district proposes to unilaterally change the student's current IEP placement**

Notice must be sent to the parents, including a copy of the procedural safeguards notice, on the day the decision to change the student's current IEP placement is made.

**A manifestation determination review must be conducted immediately, if possible, but in no case later than 10 school days after the date on which the decision to take action is made [Refer to Manifestation Table].**

(Behavior assessment plan must be developed and behavior intervention plan implemented or, if the student already has a behavior intervention plan, the plan must be reviewed and modified, if necessary, within 10 business days of removal or commencing removal that constitutes a change of placement.)

**Conduct is a manifestation of IDEA-protected disability.**

- If the parents disagree with the proposed placement, the district may request an expedited due process hearing officer for an **ORDER** to place the student in a proposed IAES.
- The due process hearing officer may **ORDER** placement in an IAES for 45 days or less.

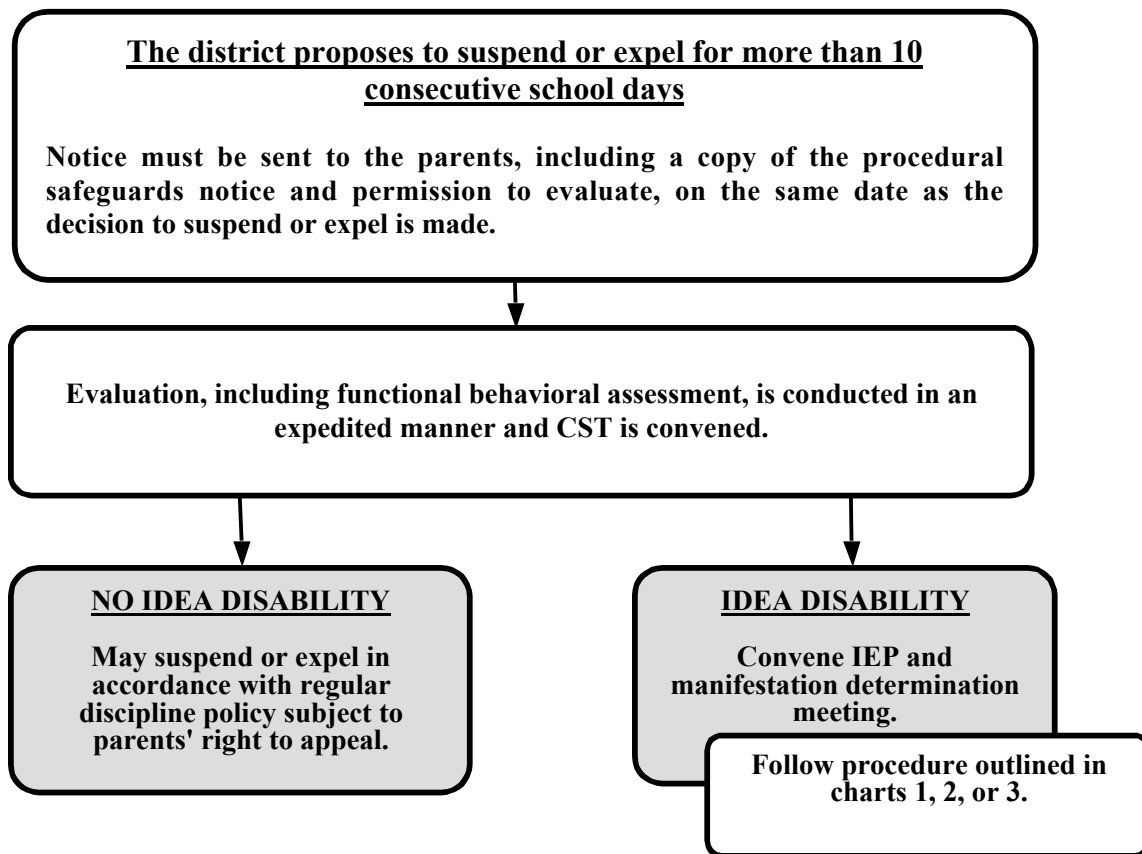
**Conduct is not a manifestation of IDEA-protected disability.**

- The district may unilaterally change the student's IEP placement for the same length of time that it would remove a student without an IDEA-protected disability for the same behavior.
- The district is required to provide services.

(The student's IEP team determines services necessary for the student to progress in the general curriculum and advance toward achieving the goals set out in the IEP in another setting.)

**The parent may request a due process hearing if the parent disagrees with the manifestation determination or the placement – "stay put" is in the IAES until a due process order is issued or expiration of the IAES, whichever occurs first.**

## **Suspension Chart 4 – Student not IDEA Identified, and School District has Knowledge\* that Student may be Eligible**



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### **\*Sec. 300.527 Protections for children not yet eligible for special education and related services**

(reads in part)

(b) Basis of knowledge. An LEA must be deemed to have knowledge that a child is a child with a disability if--

(1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services, in accordance with Sec. 300.7;

(3) The parent of the child has requested an evaluation of the child pursuant to Secs. 300.530-300.536; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency--

(1) Either--

(i) Conducted an evaluation under Secs. 300.530-300.536, and determined that the child was not a child with a disability under this part; or

(ii) Determined that an evaluation was not necessary; and

(2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with Sec. 300.503.

**CODE OF FEDERAL REGULATIONS (CFR)**  
**34 CFR Part 300**

**Sec. 300.9 Day; business day; school day**

As used in this part, the term--

- (a) Day means calendar day unless otherwise indicated as business day or school day;
- (b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in Sec. 300.403(d)(1)(ii)); and
- (c)(1) School day means any day, including a partial day, that children are in attendance at school for instructional purposes.
- (2) The term school day has the same meaning for all children in school, including children with and without disabilities.

**Sec. 300.121 Free appropriate public education (FAPE)** (reads in part)

(d) FAPE for children suspended or expelled from school. (1) A public agency need not provide services during periods of removal under Sec. 300.520(a)(1) to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.

(2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must--

(i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is--

(A) Under the school personnel's authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under Sec. 300.519(b) (Sec. 300.520(a)(1)); or

(B) For behavior that is not a manifestation of the child's disability, consistent with Sec. 300.524; and

(ii) Provide services consistent with Sec. 300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is--

(A) For drug or weapons offenses under Sec. 300.520(a)(2); or

(B) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with Sec. 300.521.

(3)(i) School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under Sec. 300.519 (Sec. 300.520(a)(1)).

(ii) The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, consistent with Sec. 300.524.

### **Sec. 300.519 Change of placement for disciplinary removals**

For purposes of removals of a child with a disability from the child's current educational placement under Secs. 300.520-300.529, a change of placement occurs if--

- (a) The removal is for more than 10 consecutive school days; or
- (b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. (Authority: 20 U.S.C. 1415(k))

### **Sec. 300.520 Authority of school personnel**

(a) School personnel may order--

(1)(i) To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Sec. 300.519(b));

(ii) After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under Sec. 300.121(d); and

(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if--

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b)(1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under Sec. 300.519, including the action described in paragraph (a)(2) of this section--

(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.

(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(c)(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under Sec. 300.519, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.



(d) For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug--

(i) Means a controlled substance; but

(ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1), (10))

#### **Sec. 300.521 Authority of hearing officer**

A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing--

(a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of Sec. 300.522(b).

(e) As used in this section, the term substantial evidence means beyond a preponderance of the evidence. (Authority: 20 U.S.C. 1415(k)(2), (10))

#### **Sec. 300.522 Determination of setting**

(a) General. The interim alternative educational setting referred to in Sec. 300.520(a)(2) must be determined by the IEP team.

(b) Additional requirements. Any interim alternative educational setting in which a child is placed under Secs. 300.520(a)(2) or 300.521 must--

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior described in Secs. 300.520(a)(2) or 300.521, that are designed to prevent the behavior from recurring. (Authority: 20 U.S.C. 1415(k)(3))

#### **Sec. 300.523 Manifestation determination review**

(a) General. If an action is contemplated regarding behavior described in Secs. 300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under Sec. 300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children--

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in Sec. 300.504; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(b) Individuals to carry out review. A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

(c) Conduct of review. In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel--

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including --

(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;

(ii) Observations of the child; and

(iii) The child's IEP and placement; and

(2) Then determine that--

(i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(d) Decision. If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(e) Meeting. The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under Sec. 300.520(b).

(f) Deficiencies in IEP or placement. If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies. (Authority: 20 U.S.C. 1415(k)(4))

### **Sec. 300.524 Determination that behavior was not manifestation of disability**

(a) General. If the result of the review described in Sec. 300.523 is a determination, consistent with Sec. 300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in Sec. 300.121(d).

(b) Additional requirement. If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) Child's status during due process proceedings. Except as provided in Sec. 300.526, Sec. 300.514 applies if a parent requests a hearing to challenge a determination, made through the

review described in Sec. 300.523, that the behavior of the child was not a manifestation of the child's disability. (Authority: 20 U.S.C. 1415(k)(5))

### **Sec. 300.525 Parent appeal**

(a) General. (1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under Secs. 300.520-300.528, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.

(b) Review of decision. (1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of Sec. 300.523(d).

(2) In reviewing a decision under Sec. 300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in Sec. 300.521. (Authority: 20 U.S.C. 1415(k)(6))

### **Sec. 300.526 Placement during appeals**

(a) General. If a parent requests a hearing or an appeal regarding a disciplinary action described in Sec. 300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Sec. 300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State agency or local educational agency agree otherwise.

(b) Current placement. If a child is placed in an interim alternative educational setting pursuant to Sec. 300.520(a)(2) or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

(c) Expedited hearing. (1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in Sec. 300.521.

(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(4) The procedure in paragraph (c) of this section may be repeated, as necessary. (Authority: 20 U.S.C. 1415(k)(7))

### **Sec. 300.527 Protections for children not yet eligible for special education and related services**

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in Secs. 300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as

determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. An LEA must be deemed to have knowledge that a child is a child with a disability if--

(1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services, in accordance with Sec. 300.7;

(3) The parent of the child has requested an evaluation of the child pursuant to Secs. 300.530-300.536; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency--

(1) Either--

(i) Conducted an evaluation under Secs. 300.530-300.536, and determined that the child was not a child with a disability under this part; or

(ii) Determined that an evaluation was not necessary; and

(2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with Sec. 300.503.

(d) Conditions that apply if no basis of knowledge. (1) General. If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) Limitations. (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Sec. 300.520 or 300.521, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of Secs. 300.520-300.529 and section 612(a)(1)(A) of the Act. (Authority: 20 U.S.C. 1415(k)(8))

### **Federal Register, Vol 64, No. 48, 3/12/99, Attachment 1 – Analysis of Comments and Changes**

#### **Page 12619, 300.520, Authority of school personnel, Discussion:**

An in-school suspension would not be considered a part of the days of suspension addressed in paragraph (a) of this section as long as the child is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive services specified on his

or her IEP and continue to participate with nondisabled children to the extent they would have in their current placement.

**Page 12619, 300.520, Authority of school personnel, Discussion:**

Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP. If the bus transportation is a part of the child's IEP, a bus suspension would be treated as a suspension under Sec. 300.520 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where all other services will be delivered. If the bus transportation is not a part of the child's IEP, a bus suspension would not be a suspension under Sec. 300.520. In those cases, the child and his or her parents would have the same obligations to get to and from school as a nondisabled child who had been suspended from the bus. However, public agencies should attend to whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether bus behavior should be addressed in the IEP or behavioral intervention plan for the child.

**Montana Code Annotated  
Title 20, Education  
Chapter 5, Pupils**

**20-5-202. Suspension and expulsion**

(1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is a disciplinary action available only to the trustees.

(2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting.